

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

Phyllis A. Huster	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Civil No.: 1:14-CV-03304-ELR
J2 Global Communication, Inc.,	)	
Advanced Messaging Technologies,	)	
Inc.,	)	
Unified Messaging Solutions, LLC,	)	
Acacia Patent Acquisition LLC, and	)	
Charles R. Bobo II.	)	
	)	
	)	
Defendants.	)	

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**PLAINTIFF HUSTER’S RESPONSE IN OPPOSITION TO DEFENDANT  
J2’S MOTION TO DISMISS**

J2 contends that Count I should be dismissed against it because it does not have an economic interest in the patents. The Federal Circuit has held that “parties with an economic stake in a patent's validity may be subject to a § 256 suit.” See Chou v. University of Chicago, 254 F. 3d 1347, 1359 (Fed. Cir. 2001)/

At this stage, it would improper to dismiss count 1 against J2. In considering a Rule 12(b)(6) motion, the Court construes the pleading in the non-movant's favor and accepts the allegations of facts therein as true. See, e.g., Stroman v. Bank of America Corp., 852 F. Supp. 2d 1366, 1370 (N.D.Ga. 2012)

Defendants have been playing a constant “pass the patent” game to avoid liability through its various corporate entities. Plaintiff cannot attempt to rely on Fed. R. Civ. P. 12(b)(6) and then attempt to challenge the allegations. Plaintiff has properly pled the relationship between the parties and that “[o]n information and belief, **each of Defendants derive income from one or more of the patents-in-suit.**” (See ECF No. 128 at ¶8.)

Accordingly, Plaintiff’s complaint support a § 256 suit against J2. For the above reasons, Defendant J2’s motion to dismiss should be denied.

Respectfully submitted this 6<sup>th</sup> day of April, 2015.

/s/ Charlena Thorpe  
Charlena L. Thorpe  
Georgia Bar No. 760954  
charlena.thorpe@charlenathorpe.com  
THE LAW OFFICE OF CHARLENA  
THORPE, INC.  
2180 Satellite Boulevard  
Suite 400  
Duluth, GA 30097  
Tel: 770-239-1642  
Fax: 888-898-3784

*Attorney for Plaintiff*

\*\*Counsel certifies that the brief has been prepared with one of the font and point selections approved by the court in LR 5.1C

I certify that I have served **PLAINTIFF HUSTER’S RESPONSE IN OPPOSITION TO DEFENDANT BOBO’S MOTION TO DISMISS** via the

Court's CM/ECF system on the date below, to opposing counsel of record.

Dated: April 6, 2015

By: /s/ Charlena Thorpe

Charlena Thorpe